

REMARKS/DISCUSSION OF ISSUES

By this Amendment, Applicant corrects a minor typographical error in claim 20. Accordingly, claims 1-10, 12-13, 16-18 and 20-21 are pending in the application.

Reexamination and reconsideration are respectfully requested in view of the following Remarks.

35 U.S.C. § 112

The Office Action rejects claims 30-21 under 35 U.S.C. § 112 because of a very minor typographical error in claim 20.

Applicant respectfully submits that it would have been very clear to anyone reading claim 20 that the word “and” on line 6 should have read “an” and that this minor error did not rise to the level of a 35 U.S.C. § 112 defect.

Nevertheless, the extra “d” at the end of “an” has now been deleted.

Accordingly, Applicant respectfully requests that the rejections of claims 20-21 under 35 U.S.C. § 112 be withdrawn.

35 U.S.C. § 103

The Office Action rejects claims 1-10, 12-13, and 18 under 35 U.S.C. § 103 over Iwaya U.S. Patent 6,330,712 (“Iwaya”) in view of Raves et al. U.S. Patent Application Publication 2003/0182500 (“Raves”); claims 16-17 under 35 U.S.C. § 103 over Miller et al. U.S. Patent 7,120,786 (“Miller”) in view of Iwaya; claims 20-21 under 35 U.S.C. § 103 over Applicant’s Admitted Prior Art (“AAPA”) in view of Peters et al. U.S. Patent 6,920,555 (“Peters”); claims 1-11 under 35 U.S.C. § 103 over Hill U.S. Patent Application Publication 2003/0182500 (“Hill”) in view of Raves; claims 12-13 under 35 U.S.C. § 103 over Hill, claims 16-17 under 35 U.S.C. § 103 over Miller in view of Hensley U.S. Patent 6,993,649 (“Hensley”); and claim 18 under 35 U.S.C. § 103 over Miller in view of Hill and further in view of Raves.

Applicant respectfully traverses these rejections for at least the following reasons.

Claims 20-21

Among other things, the apparatuses of each of the claims 20 and 21 include a processor configured to execute an algorithm that includes configuring a flag in the master system with a setting, where the configured flag is for indicating that the overlay is needed and has not been provided.

Applicant respectfully submits that the cited combination of art does not disclose or suggest such a feature.

The Office Action states that the AAPA teaches configuring the master system with a setting, indicating that an overlay is needed and has not been provided.

Applicant respectfully disagrees.

The AAPA teaches that *“it is often necessary or desirable to create a master image of an embedded system that includes an overlay, or where an overlay is desired in the clones created with the image. However this has not been previously possible using standard imaging tools.”*

Applicant respectfully submits that the AAPA does not teach configuring the master system with a setting, indicating that an overlay is needed and has not been provided. The Office Action does not cite anything in the AAPA that teaches this.

Applicant respectfully submits that Peters also does not disclose configuring a master system with a setting, indicating that an overlay is needed and has not been provided. Indeed, Applicant respectfully submits that the cited portions of Peters make no mention at all of an overlay.

Therefore, Applicant respectfully submits that no combination of an AAPA and Peters would produce a system with a processor that configures a flag in a master system with a setting, where the configured flag is for indicating that the overlay is needed and has not been provided.

Accordingly, for at least these reasons, claims 20 and 21 are deemed to be patentable over the cited art.

“Iwaya and Raves”

Claim 1

Among other things, the method of claim 1 includes enabling an image of a master system to self-create an overlay partition (more specifically, an image of a master system that includes a non-writable file partition, to automatically self-create an overlay partition).

Applicant respectfully submits that no combination of the cited art teaches a method where an image of a master system self-creates an overlay partition.

The Office Action states that Iwaya teaches automatically self-creating an overlay in response to receiving writes directed to a non-writable memory.

The Office Action does not assert that Iwaya teaches that **an image of a master system** self-creates an overlay partition. Indeed, Iwaya does not discuss images, and would not seem to have any reason for any image of a master system (for example, Iwaya does not relate to cloning any operating system).

Applicant respectfully submits that Iwaya does **not** teach that an image of a master system self-creates an overlay partition.

The Office Action does not state that Raves teaches that an image of an operating system self-creates an overlay partition.

Raves is cited for disclosing a partitioned memory with write filtering protections with an operating system image stored in a partition.

Applicant respectfully submits that Raves does not disclose or suggest that any **image of any master system** automatically self-creates any overlay partition.

Applicant respectfully submits that there is nothing in Raves that would provide any reason for one of ordinary skill in the art at the time the invention was made to modify Iwaya so that image of an operating system self-creates an overlay partition.

So no combination of Iwaya and Raves could produce the method of claim 1.

Applicant also respectfully traverses the proposed combination of Iwaya and Raves with respect to claim 1.

A rejection on obviousness grounds under 35 U.S.C. § 103 cannot be sustained by mere conclusory statements: instead there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness. In re Kahn, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006). See also KSR International Co. v. Teleflex Inc., 550 U.S. ___, 82 USPQ2d 1385, 1396 (2007) (quoting Federal Circuit statement with approval). M.P.E.P. § 2141 (III).

Here, Applicant respectfully submits that the Office Action does not offer any evidence that any of the supposed benefits of the proposed combinations would have been known or recognized as desirable by one of ordinary skill in the art at the time the invention was made – or indeed that such benefits would even be created by the specific features that the Office Action proposes to combine!

Accordingly, for at least these reasons, Applicant respectfully submits that claim 1 is patentable over Iwaya and Raves.

Claims 2-10

Claims 2-10 all depend from claim 1 and are deemed patentable for at least the reasons set forth above with respect to claim 1. Applicant also respectfully submits that the text cited in the Office Action from Iwaya and Raves **very clearly** does not disclose the features of at least claims 2-4 and 8-10.

Applicant also respectfully traverses the proposed combination of Hill and Raves with respect to claims 2-10.

Again, a rejection on obviousness grounds under 35 U.S.C. § 103 cannot be sustained by mere conclusory statements: instead there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness. In re Kahn, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006). See also KSR International Co. v. Teleflex Inc., 550 U.S. ___, 82 USPQ2d 1385, 1396 (2007) (quoting Federal Circuit statement with approval). M.P.E.P. § 2141 (III)

Here, the Office Action offers not a single reason for combining the various

portions of text from the different references which the Office Action cobbles together for each of the claims 2-10.

Accordingly, for at least these additional reasons, Applicant respectfully submits that claims 2-10 are patentable over Iwaya and Raves.

Claims 12-13

Among other things, the methods of claims 12 and 13 each include configuring a flag in a master system with a setting, where the configured flag is for indicating that an overlay is needed and has not been provided.

Applicant respectfully submits that link flags in Iwaya's index table clearly do not "*indicate that an overlay is needed and has not been provided.*"

So no combination of Iwaya and Raves could produce the methods of claims 12 and 13.

Furthermore, the Office Action does not even bother to assert that any combination of Iwaya and Raves would ever create a clone of a master system on a storage of another system based on the master image. Applicant respectfully submits that no combination of Iwaya and Raves would ever produce a method including such a feature.

So, again, no combination of Iwaya and Raves could produce the methods of claims 12 and 13.

The FINAL Office Action fails to address these arguments. Applicant respectfully requests that the Examiner consider these arguments and either allow claims 12 and 13, or provides a reason why it is believed that these arguments are in error.

Applicant also respectfully traverses the proposed combination of Iwaya and Raves with respect to claims 12 and 13.

A rejection on obviousness grounds under 35 U.S.C. § 103 cannot be sustained by mere conclusory statements: instead there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness. In re Kahn, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir.

2006). See also KSR International Co. v. Teleflex Inc., 550 U.S. ___, 82 USPQ2d 1385, 1396 (2007) (quoting Federal Circuit statement with approval). M.P.E.P. § 2141 (III)

Here, Applicant respectfully submits that the Office Action does not offer any evidence that any of the supposed benefits of the proposed combinations would have been known or recognized as desirable by one of ordinary skill in the art at the time the invention was made – or indeed that such benefits would even be created by the specific features that the Office Action proposes to combine!

Accordingly, for at least these reasons, Applicant respectfully submits that claims 12 and 13 are patentable over Iwaya and Raves.

Claim 18

Claim 18 is drawn to a storage storing a condensed system image comprising an operating system, where the condensed system image is capable of being exploded to install the operating system on disk drives with different sizes or configurations, and where the operating system is enabled to self-create an overlay partition and write filter when booted.

The Office Action states that:

As to claim 18, Iwaya teaches a storage storing a condensed (compressed) system image comprising an operating system, where the condensed system image is capable of being exploded (decompressed) to install the operating system (patch, etc.) on disk drives with different sizes or configurations and an overlay partition and write filter can be self-created (because of compressed data, it could be installed on large storage areas or small/portable devices with small storage areas) (Abstract, col. 3, lines 20-40).

Applicant respectfully disagrees. Contrary to the Office Action, Applicant respectfully submits that Iwaya's "patch" is not an operating system, decompressing data from Iwaya's ROM does not install any operating system (and indeed, does not

“install” the patch data either!), and Iwaya does not self-create an overlay partition and write filter when booted (Iwaya appears to make no mention of anything being booted).

Raves does not remedy these shortcomings.

The FINAL Office Action fails to address these arguments. Applicant respectfully requests that the Examiner consider these arguments and either allow claim 18, or provide a reason why it is believed that these arguments are in error.

Applicant also respectfully traverses the proposed combination of Iwaya and Raves with respect to claim 18.

A rejection on obviousness grounds under 35 U.S.C. § 103 cannot be sustained by mere conclusory statements: instead there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness. In re Kahn, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006). See also KSR International Co. v. Teleflex Inc., 550 U.S. ___, 82 USPQ2d 1385, 1396 (2007) (quoting Federal Circuit statement with approval). M.P.E.P. § 2141 (III).

Here, Applicant respectfully submits that the Office Action does not offer any evidence that any of the supposed benefits of the proposed combinations would have been known or recognized as desirable by one of ordinary skill in the art at the time the invention was made – or indeed that such benefits would even be created by the specific features that the Office Action proposes to combine!

Accordingly, for at least these reasons, Applicant respectfully submits that claim 18 is patentable over Iwaya and Raves.

“Miller and Iwaya”

Claims 16-17

Among other things, the methods of claims 16 and 17 each include performing a first boot of a target drive, and disabling an overlay for the operating system.

The Office Action does not even bother to assert that any combination of Miller

and lwaya teaches disabling any overlay.

So no combination of Miller and lwaya could ever produce the methods of claims 16 and 17.

The FINAL Office Action fails to address these arguments. Applicant respectfully requests that the Examiner consider these arguments and either allow claims 16 and 17, or provide a reason why it is believed that these arguments are in error.

Furthermore, link flags in lwaya's index table clearly do not indicate that an overlay is needed and has not been initialized.

So, again, no combination of Miller and lwaya could ever produce the methods of claims 16 and 17.

Additionally, Applicant respectfully submits that Miller does not disclose in the cited text that an operating system install is configured to have an overlay providing write capability to a non-writable area. The cited text states that "[t]he invention overlays a file system listing the files within the compressed image over an existing file system." It does not teach that an operating system install is configured to have an overlay providing write capability to a non-writable area.

Applicant also respectfully traverses the proposed combination of Miller and lwaya with respect to claims 16 and 17.

A rejection on obviousness grounds under 35 U.S.C. § 103 cannot be sustained by mere conclusory statements: instead there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness. In re Kahn, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006). See also KSR International Co. v. Teleflex Inc., 550 U.S. ___, 82 USPQ2d 1385, 1396 (2007) (quoting Federal Circuit statement with approval). M.P.E.P. § 2141 (III).

Here, Applicant respectfully submits that the Office Action does not offer any evidence that any of the supposed benefits of the proposed combinations would have been known or recognized as desirable by one of ordinary skill in the art at the time

the invention was made – or indeed that such benefits would even be created by the specific features that the Office Action proposes to combine!

Accordingly, for at least these reasons, Applicant respectfully submits that claims 16 and 17 are patentable over the cited art.

“Hill and Raves”

Claim 1

Among other things, the method of claim 1 includes enabling an image of a master system to self-create an overlay partition (more specifically, an image of a master system that includes a non-writable file partition, to automatically self-create an overlay partition).

Applicant respectfully submits that no combination of the cited art teaches a method where an image of a master system self-creates an overlay partition.

The Office Action states that Hill teaches in paragraphs [0008], [0022], [0024]-[0025] and [0027] that **an image of a master system** self-creates an overlay partition.

Applicant respectfully disagrees.

Hill discloses two features for two different kinds of systems (see paragraph [0022], lines 8-11). The first feature (see FIG. 2) is checkpointing of operating system data in a non-volatile (e.g., Flash) memory where the operating system itself is stored in non-writable memory (e.g., a CD-ROM) (paragraph [0022], lines 11-15). The second feature (see FIG. 3) is replacing an operating system image in a writable (e.g., Flash) memory with a new operating system while the operating system continues to run (paragraph [0022], lines 15-19). The cited paragraphs [0022], [0024]-[0025] and [0027] pertain to the former type of system (FIG. 2). The cited paragraph [0008] pertains to the latter type of system (FIG. 3).

Applicant respectfully submits that Hill does not teach in either case that **an image of a master system self-creates an overlay partition**. Applicant respectfully submits that Hill does not teach that an image of a master system self-creates an overlay partition.

As noted above, the Office Action does not state that Raves teaches that an image of an operating system self-creates an overlay partition, and Applicant respectfully submits that there is nothing in Raves that would provide any reason for one of ordinary skill in the art at the time the invention was made to modify Iwaya so that image of an operating system self-creates an overlay partition.

So no combination of Hill and Raves could produce the method of claim 1.

Applicant also respectfully traverses the proposed combination of Hill and Raves with respect to claim 1.

A rejection on obviousness grounds under 35 U.S.C. § 103 cannot be sustained by mere conclusory statements: instead there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness. In re Kahn, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006). See also KSR International Co. v. Teleflex Inc., 550 U.S. ___, 82 USPQ2d 1385, 1396 (2007) (quoting Federal Circuit statement with approval). M.P.E.P. § 2141 (III)

Here, Applicant respectfully submits that the Office Action does not offer any evidence that any of the supposed benefits of the proposed combinations would have been known or recognized as desirable by one of ordinary skill in the art at the time the invention was made – or indeed that such benefits would even be created by the specific features that the Office Action proposes to combine!

Accordingly, for at least these reasons, Applicant respectfully submits that claim 1 is patentable over Hill and Raves.

Claims 2-10

Claims 2-10 all depend from claim 1 and are deemed patentable for at least the reasons set forth above with respect to claim 1. Applicant also respectfully submits that the text cited in the Office Action from Hill and Raves does not disclose many features of claims 2-10.

Applicant also respectfully traverses the proposed combination of Hill and Raves with respect to claims 2-10.

Again, a rejection on obviousness grounds under 35 U.S.C. § 103 cannot be sustained by mere conclusory statements: instead there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness. In re Kahn, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006). See also KSR International Co. v. Teleflex Inc., 550 U.S. ___, 82 USPQ2d 1385, 1396 (2007) (quoting Federal Circuit statement with approval). M.P.E.P. § 2141 (III)

Here, the Office Action offers not a single reason for combining the various portions of text from the different references which the Office Action cobbles together for each of the claims 2-10.

Accordingly, for at least these additional reasons, Applicant respectfully submits that claims 2-10 are patentable over Hill and Raves.

"Hill"

Claims 12 and 13

Among other things, the methods of claims 12 and 13 each include configuring a flag in a master system with a setting, where the configured flag is for indicating that the overlay is needed and has not been provided.

Applicant respectfully submits that nothing in Hill suggests any method that includes such a feature.

The Office Action states that Hill teaches configuring a master system with a setting for indicating that the overlay is needed and has not been provided, citing paragraphs [0008] and [0022].

Applicant respectfully disagrees.

Paragraph [0008] discloses a method wherein a control application utilizes a write filter and a look-aside buffer in RAM to replace an operating system image in a writeable (e.g., Flash) memory with a new operating system image while the operating system continues to run. It does not disclose that any master system is configured with any setting indicating that an overlay is needed and has not been provided.

Paragraph [0022] discloses that a write filter may be employed to maintain state data of an operating system (OS) in a look-aside buffer in Flash memory when the OS is stored in memory that cannot be written to. Paragraph [0022] also discloses that a write filter may be employed replace an operating system image in a writeable (e.g., Flash) memory with a new operating system image while the operating system continues to run.

Applicant respectfully submits that nothing in the cited text suggests that any master system is configured with any setting for indicating that the overlay is needed and has not been provided.

Therefore Applicant submits that claims 12-13 are patentable over Hill.

Applicant also respectfully submits that the cited portions of Hill do not disclose creating a master image of a master system, or creating a clone of the master system on a storage of another system based on the master image. The “new operating system image” is not a master image of a master system – nor is it a **clone** of a master system.

Accordingly, for at least these reasons, Applicant respectfully submits that claims 12 and 13 are patentable over Hill.

“Miller and Hensley”

Claims 16-17

Among other things, the methods of claims 16 and 17 each include building an operating system install comprising operating system files on a target drive, where the operating system install is configured to have an overlay providing write capability to a non-writable partition.

The Office Action states that Miller discloses in at cols. 3 and 4 that an operating system install is configured to have an overlay providing write capability to a non-writable area.

Applicant respectfully disagrees. The cited text states that “[t]he invention overlays a file system listing the files within the compressed image over an existing file system.” Applicant respectfully submits that it does not teach that an operating

system install is configured to have an overlay providing write capability to a non-writable area.

So Applicant respectfully submits that no combination of Miller and Hensley could produce the methods of claims 16 and 17

Also among other things, the methods of claims 16 and 17 each include configuring the operating system install to have both a resealed or logical first-boot state and to indicate that the overlay is needed and has not been initialized.

The Office Action does not even bother to assert that any combination of Miller and Hensley teaches configuring an operating system install to indicate that an overlay is needed and has not been initialized.

So, again, no combination of Miller and Hensley could ever produce the methods of claims 16 and 17.

Applicant also respectfully traverses the proposed combination of Miller and Hensley with respect to claims 16 and 17.

A rejection on obviousness grounds under 35 U.S.C. § 103 cannot be sustained by mere conclusory statements: instead there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness. In re Kahn, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006). See also KSR International Co. v. Teleflex Inc., 550 U.S. ___, 82 USPQ2d 1385, 1396 (2007) (quoting Federal Circuit statement with approval). M.P.E.P. § 2141 (III).

Here, Applicant respectfully submits that the Office Action does not offer any evidence that any of the supposed benefits of the proposed combinations would have been known or recognized as desirable by one of ordinary skill in the art at the time the invention was made – or indeed that such benefits would even be created by the specific features that the Office Action proposes to combine!

Accordingly, for at least these reasons, Applicant respectfully submits that claims 16 and 17 are patentable over Miller and Hensley.

“Miller and Hill and Raves”

Claim 18

At the outset, it is not clear in the Office Action for what purpose Hill is cited in the rejection of claim 18. Clarification is respectfully requested.

Claim 18 is drawn to a storage storing a condensed system image comprising an operating system, where the condensed system image is capable of being exploded to install the operating system on disk drives with different sizes or configurations, and where the operating system is enabled to self-create an overlay partition and write filter when booted.

The Office Action states that the Miller discloses a condensed system image that is capable of being exploded to install the operating system on disk drives with different sizes or configurations, citing portions of cols. 2-4.

Applicant respectfully disagrees. Applicant respectfully submits that the cited text does not mention anything about a condensed system image that is capable of being exploded to install the operating system on disk drives with different sizes or configurations.

So no combination of Miller, Hill and Raves could ever produce the method of claim 18.

Furthermore, **none of the cited references discloses any operating system is enabled to self-create an overlay partition and write filter when booted.**

Applicant also respectfully traverses the proposed combination of Miller, Hill and Raves with respect to claim 18.

A rejection on obviousness grounds under 35 U.S.C. § 103 cannot be sustained by mere conclusory statements: instead there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness. In re Kahn, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006). See also KSR International Co. v. Teleflex Inc., 550 U.S. ___, 82 USPQ2d 1385, 1396 (2007) (quoting Federal Circuit statement with approval). M.P.E.P. § 2141 (III).

Here, Applicant respectfully submits that the Office Action does not offer any evidence that any of the supposed benefits of the proposed combinations would have been known or recognized as desirable by one of ordinary skill in the art at the time the invention was made – or indeed that such benefits would even be created by the specific features that the Office Action proposes to combine!

Accordingly, for at least these reasons, Applicant respectfully submits that claim 18 is patentable over Miller, Hill and Raves.

CONCLUSION

In view of the foregoing explanations, Applicant respectfully requests that the Examiner reconsider and reexamine the present application, allow claims 1-10, 12-13, 16-18 and 20-21 and pass the application to issue. In the event that there are any outstanding matters remaining in the present application, the Examiner is invited to contact Kenneth D. Springer (Reg. No. 39,843) at (571) 283.0720 to discuss these matters.

Respectfully submitted,

VOLENTINE & WHITT

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By: 

Kenneth D. Springer
Registration No. 39,843

VOLENTINE & WHITT
11951 Freedom Drive, Suite 1260
Reston, Virginia 20190
Telephone No.: (571) 283.0724
Facsimile No.: (571) 283.0740